

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RAYMOND PADILLA,

Plaintiff,

vs.

THE STATE OF NEVADA in relation
to the NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

3:07-cv-00442-RAM

**MEMORANDUM DECISION
AND ORDER**

Before the court is Plaintiff's Motion for Reconsideration. (Doc. #84.)¹ Defendants have opposed. (Doc. #87.) Also before the court is Defendants' Motion for Summary Judgment (Doc. #71) and Plaintiff's Motion for Summary Judgment (Doc. #79). After a thorough review, the court denies Plaintiff's Motion for Reconsideration and Plaintiff's Motion for Summary Judgment. The court grants Defendants' Motion for Summary Judgment.

I. BACKGROUND

At all relevant times, Plaintiff Raymond Padilla was an inmate at Ely State Prison (ESP) in the custody of the Nevada Department of Corrections (NDOC). (Pl.'s Am. Compl. 1 (Doc. #5).) Plaintiff, a *pro se* litigant, brings this action pursuant to 42 U.S.C. § 1983. (*Id.*) Defendants are administrators, correctional officers, and employees within the NDOC system. (*Id.* at 2-4.) Plaintiff seeks declaratory, injunctive, and monetary relief. (*Id.* at 14-15.)

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¹ Refers to the court's docket number

1 In an order issued March 11, 2009, the court dismissed Defendants State of Nevada in
 2 relation to the Nevada Department of Corrections, Nevada Board of Prison Commissioners,
 3 Governor Jim Gibbons, John Doe #1, Howard Skolnick, John Doe #2, Harry Peltzer, and
 4 Robert Chambliss. (Doc. #48 at 10.) The court also dismissed Count III of Plaintiff's amended
 5 complaint. (*Id.*)

6 Two claims remain in this action. In Count I, Plaintiff alleges that Defendants
 7 sanctioned him twice for the same disciplinary infraction. (Pl.'s Am. Compl. 5.) Plaintiff claims
 8 that after he received his original sanction of a ten-day loss of his canteen privileges,
 9 Defendants imposed an additional sanction which resulted in the impounding of Plaintiff's
 10 personal property for 180 days, revocation of phone call and canteen privileges for 180 days,
 11 revocation of visiting privileges for one year, and revocation of package privileges for two years.
 12 (*Id.*) In Count II, Plaintiff alleges that ESP's Institutional Procedure (IP) 5.13 violates Nevada
 13 Revised Statute § 209.361 and NDOC Administrative Regulations (ARs) 585 and 707. (*Id.* at
 14 6.) Plaintiff alleges that IP 5.13 denies him a fair hearing, notice of charges, or appeal. (*Id.*)

15 Based on these allegations, Plaintiff alleges Defendants violated his Eighth Amendment
 16 right to be free from cruel and unusual punishment and his Fourteenth Amendment right to
 17 procedural due process and equal protection. (*Id.* at 5-7.)

18 **II. PLAINTIFF'S MOTION FOR RECONSIDERATION**

19 Plaintiff requests the court reconsider its dismissal of certain Defendants in its order
 20 issued March 11, 2009. (Pl.'s Mot. to Reconsider 1-4 (Doc. #84).) Plaintiff argues that
 21 information he has obtained through discovery shows the personal participation those
 22 Defendants the court has dismissed. (*Id.*) Defendants contend that the information Plaintiff
 23 submits fails to demonstrate the personal participation of the dismissed Defendants. (Defs.'
 24 Opp'n to Pl.'s Mot. to Reconsider 2-4 (Doc. #87).)

25 **A. LEGAL STANDARD**

26 Under Fed. R. Civ. P. 59(e) a district court may reconsider and amend a previous order.
 27 However, this is "an extraordinary remedy, to be used sparingly in the interests of finality and
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1 conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir.
2 2003)(internal quotations omitted). Absent “highly unusual circumstances” a motion for
3 reconsideration may only be granted where one of three circumstances is present: (1) the court
4 made manifest errors of law or fact upon which the judgment is based, (2) there is newly
5 discovered evidence or previously unavailable evidence, or (3) there is an intervening change
6 in the controlling law. *Id.* “A Rule 59(e) motion may not be used to raise arguments or present
7 evidence for the first time when they could reasonably have been raised earlier in the
8 litigation.” *Id.*

9 **B. DISCUSSION**

10 Like his original allegations, Plaintiff’s allegations in his motion for reconsideration fail
11 to plausibly show how Defendants Gibbons, John Doe #1, Howard Skolnick, John Doe #2,
12 Harry Peltzer, and Robert Chambliss personally participated in the alleged constitutional
13 violations. Plaintiff fails to plausibly factually allege that Gibbons, John Doe #1, Howard
14 Skolnick, or John Doe #2 personally directed, participated in, or had knowledge of the alleged
15 misconduct by the prison officials at ESP. For instance, Plaintiff alleges that IP 5.13 was
16 “reviewed and approved by the Nevada Attorney Generals Office, Directors Office of the
17 N.D.O.C. and the Nevada Board of Prison Commissioners.” (Pl.’s Mot. to Reconsider 1.)
18 However, Plaintiff fails to allege facts tying the specific, named individuals to the review of IP
19 5.13. Additionally, Plaintiff fails to plausibly allege that Defendants Peltzer and Chambliss
20 personally participated simply because they denied Plaintiff’s grievances. Responding to a
21 grievance, in and of itself, does not necessarily mean that Peltzer and Chambliss played a role
22 in the alleged constitutional violations. Plaintiff fails to plead facts sufficient to allege personal
23 participation as to the dismissed Defendants. Therefore, the court denies Plaintiff’s motion for
24 reconsideration.

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III. CROSS-MOTIONS FOR SUMMARY JUDGMENT

A. LEGAL STANDARD

The purpose of summary judgment is to avoid unnecessary trials when there is no dispute over the facts before the court. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). All reasonable inferences are drawn in favor of the non-moving party. *In re Slatkin*, 525 F.3d 805, 810 (9th Cir. 2008) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 244 (1986)). Summary judgment is appropriate if “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” *Id.* (citing Fed. R. Civ. P. 56(c)). Where reasonable minds could differ on the material facts at issue, however, summary judgment is not appropriate. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996). In deciding whether to grant summary judgment, the court must view all evidence and any inferences arising from the evidence in the light most favorable to the nonmoving party. *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996).

The moving party bears the burden of informing the court of the basis for its motion, together with evidence demonstrating the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met its burden, the party opposing the motion may not rest upon mere allegations or denials of the pleadings, but must set forth specific facts showing there is a genuine issue for trial. *Anderson*, 477 U.S. at 248. Although the parties may submit evidence in an inadmissible form, only evidence which might be admissible at trial may be considered by a trial court in ruling on a motion for summary judgment. Fed. R. Civ. P. 56(c).

In evaluating the appropriateness of summary judgment, three steps are necessary: (1) determining whether a fact is material; (2) determining whether there is a genuine issue for the trier of fact, as determined by the documents submitted to the court; and (3) considering that evidence in light of the appropriate standard of proof. *Anderson*, 477 U.S. at 248. As to materiality, only disputes over facts that might affect the outcome of the suit under the

governing law will properly preclude the entry of summary judgment; factual disputes which are irrelevant or unnecessary will not be considered. *Id.* Where there is a complete failure of proof concerning an essential element of the nonmoving party's case, all other facts are rendered immaterial, and the moving party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 323.

B. DISCUSSION

On June 12, 2007, a correctional officer drafted a Notice of Charges (NOC) that charged Plaintiff with two general violations for Plaintiff's refusal to exit the showers and Plaintiff's refusal to double cell. (Defs.' Mot. for Summ. J. Ex. A (Doc. #71).) On June 17, 2007, a preliminary hearing officer served Plaintiff with the NOC and inquired into the charges. (*Id.*) Plaintiff refused to give a statement. (*Id.* Ex. B.) On July 1, 2007, Plaintiff attended a disciplinary hearing before a hearing officer. (*Id.* Ex. C.) The hearing officer found Plaintiff guilty of both general violations and sanctioned Plaintiff to ten-days suspension of canteen privileges. (*Id.*) On July 23, 2007, Defendant McDaniel informed Plaintiff that as a result of the guilty finding based on Plaintiff's refusal to double cell, Plaintiff would lose the following privileges pursuant to IP 5.13: personal phone calls for 180 days, electrical appliances for 180 days, personal visits for one year, canteen privileges for 180 days, and package privileges for two years. (*Id.* Ex. D.)

1. Due Process

In Count I, Plaintiff argues that Defendant McDaniel imposed additional sanctions on him on July 23, 2007, without notice, a hearing, witnesses, assistance, a fair and impartial hearing officer, or a written statement of evidence and facts to support findings. (Pl.'s Mot. for Summ. J. 6.) Plaintiff argues that he was denied due process protections and that these sanctions violated various Administrative Regulations and Nevada Revised Statutes. (*Id.* at 5-8.) Defendants contend that Plaintiff fails to establish a protected liberty interest. (Defs.' Mot. for Summ. J. 8-9.) Defendants argue that even if Plaintiff could establish a liberty interest, Defendants provided Plaintiff all the process he was due. (*Id.* at 9.)

1 Under the Due Process Clause, a prisoner is entitled to certain procedural protections
2 when he is charged with a disciplinary violation. *Wolff v. McDonnell*, 418 U.S. 539, 564-571
3 (1974). These protections include advance written notice of the charge, an opportunity to
4 present evidence and call witnesses, and a written statement of the findings. *Id.* However,
5 these protections only apply when the disciplinary action implicates a protected liberty interest
6 in some “unexpected matter” or imposes an “atypical and significant hardship on the inmate
7 in relation to the ordinary incidents of prison life.” *Sandin v. Connor*, 515 U.S. 472, 484 (1995).
8 The inquiry into whether a prison hardship is atypical and significant is determined by three
9 factors: (1) whether the challenged condition “mirrored those conditions imposed upon
10 inmates in administrative segregation and protective custody” and thus comported with the
11 prison’s discretionary authority; (2) the duration of the condition and degree of restraint
12 imposed; and (3) whether the state’s action will invariably affect the duration of the prisoner’s
13 sentence. *Id.* at 486-87.

14 Assuming without deciding that Plaintiff has a protected liberty interest in remaining
15 free from the loss of privileges imposed on him via IP 5.13, Plaintiff received all the process he
16 was due at the July 1, 2007 disciplinary hearing. First, on June 17, 2007, Plaintiff received
17 notice of the charges against him for his refusal to double cell. The notice specifically referred
18 to IP 5.13. (Defs.’ Mot. For Summ. J. Ex. A.) Second, Plaintiff was present at the July 1, 2007
19 hearing and made a statement regarding the charges. (*Id.* Ex. C.) Third, Plaintiff was issued
20 a written statement upon the hearing officer’s guilty finding. (*Id.*) Although the subsequent
21 sanctions imposed on Plaintiff via IP 5.13 occurred later than the original sanction issued at the
22 July 1, 2007 hearing, Plaintiff received proper procedural due process for the general violation
23 that forms the basis for the IP 5.13 sanction. The mere fact that Defendants administered
24 Plaintiff’s total sanction in a bifurcated manner fails to trigger a requirement that they provide
25 additional process. The court concludes that Defendants provided Plaintiff proper due process
26 before imposing sanctions under I.P. 5.13. Thus, Defendants are entitled to summary judgment
27 on Plaintiff’s Count I procedural due process claim.

1 In Count II, Plaintiff argues that IP 5.13 violates his rights to procedural due process
 2 because it conflicts with various ARs and exceeds the authority delegated to the Director and
 3 wardens of the NDOC under various Nevada Revised Statutes. (Pl.'s Compl. 6-7; Pl.'s Opp'n
 4 to Summ. J. 8-10.) Plaintiff claims that IP 5.13 effectively denies him notice, hearing, and
 5 appeal because no AR contains a procedure for imposing sanctions under IP 5.13. (Pl.'s Compl.
 6 6.)

7 "[T]he Due Process Clause does not federalize state-law procedural requirements."
 8 *Kennedy v. Blankenship*, 100 F.3d 640, 643 (8th Cir. 1996). A prison official's violation of a
 9 prison administrative regulation, without more, does not amount to a federal constitutional
 10 violation. *Phillips v. Norris*, 320 F.3d 844, 847 (8th Cir. 2003)("[T]here is no federal
 11 constitutional liberty interest in having state officers follow state law or prison officials follow
 12 prison regulations."); *Hovater v. Robinson*, 1 F.3d 1063, 1068 n.4 (10th Cir. 1993)("[A] failure
 13 to adhere to administrative regulations does not equate to a constitutional violation."); see
 14 *Sandin v. Conner*, 515 U.S. 472 (1995); see *Walker v. Sumner*, 14 F.3d 1415, 1419-20 (9th Cir.
 15 1994), *abrogated in part on other grounds by Sandin v. Connor*, 515 U.S. 472 (1995).
 16 Although it may be desirable for a prison to adhere to its own regulations, such adherence is
 17 not an independent constitutional mandate. Prison regulations are not a proxy for the
 18 substantive protections conferred under the U.S. Constitution. Thus, in assessing an alleged
 19 constitutional violation, the court ascertains whether the conduct or condition in question
 20 presents a claim under the applicable constitutional standards – not whether the prison
 21 officials have followed their own rules. Therefore, Plaintiff fails to state a procedural due
 22 process claim premised on IP 5.13's conflict with NDOC ARs, and Defendants are entitled to
 23 summary judgment on the procedural due process claim in Count II.

24 2. Double Jeopardy

25 To the extent Plaintiff's claim in Count I can be construed as a claim under the Double
 26 Jeopardy Clause of the Fifth Amendment, Plaintiff fails to state a claim. The Double Jeopardy
 27 Clause of the Fifth Amendment guarantees that no person shall "be subject for the same offense
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1 to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. The guarantee against double
2 jeopardy protects against (1) a second prosecution for the same offense after acquittal or
3 conviction and (2) multiple punishments for the same offense. *See Witte v. United States*, 515
4 U.S. 389, 395-96 (1995). Prison disciplinary proceedings, however, do not constitute criminal
5 prosecutions. *Wolff*, 418 U.S. at 556. Furthermore, the protection against multiple punishment
6 afforded by the Double Jeopardy Clause is not implicated by prior prison disciplinary
7 proceedings for two reasons. First, even if prison disciplinary sanctions are “punishment,” they
8 generally are not distinct from the punishment for the conviction for which petitioner is in
9 custody. Second, the sanctions are not punishment for purposes of double jeopardy because
10 they serve the governmental remedial goals of maintaining institutional order and encouraging
11 compliance with prison rules. *See United States v. Brown*, 59 F.3d 102, 104-05 (9th Cir. 1995).
12 Although a “rare” case in which a remedial sanction is so harsh as to constitute punishment
13 may implicate the Double Jeopardy Clause, *Id.* at 105-06, such circumstances are not present
14 in this case. Therefore, Defendants are entitled to summary judgment to the extent Plaintiff
15 states a claim under the Double Jeopardy Clause of the Fifth Amendment.

16 3. Eighth Amendment

17 Under the Eighth Amendment, prison conditions should not “involve the wanton and
18 unnecessary infliction of pain” or be “grossly disproportionate to the severity of the crime
19 warranting imprisonment.” *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Although prison
20 conditions may be, and often are, restrictive and harsh, prison officials “must ensure that
21 inmates receive adequate food, clothing, shelter, and medical care, and must ‘take reasonable
22 measures to guarantee the safety of the inmates.’” *Farmer v. Brennan*, 511 U.S. 825, 832
23 (1994)(quoting *Hudson v. Palmer*, 486 U.S. 517, 526-27 (1984)).

24 In challenging prison conditions, an inmate must show that prison officials acted with
25 deliberate indifference to a substantial risk of harm. *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th
26 Cir. 1998)(citing *Farmer*, 511 U.S. at 835). The deliberate indifference standard consists of an
27 objective and subjective component. *Farmer*, 511 U.S. at 843. First, “the deprivation alleged

1 must be, objectively, sufficiently serious.” *Id.* (citations and quotations omitted). The act or
2 omission of a prison official must “result in the denial of the minimal civilized measure of life’s
3 necessities.” *Id.* (citations and quotations omitted). Second, a prison official must “know of
4 and disregard an excessive risk to inmate health or safety.” *Id.* at 837. “Mere negligence is not
5 sufficient to establish liability.” *Frost*, 152 F.3d at 1128. Prison officials may avoid liability by:
6 (1) proving they were unaware of the risk, or (2) proving they “responded reasonably to the
7 risk, even if the harm ultimately was not averted.” *Farmer*, 511 U.S. at 844.

8 Here, Plaintiff fails show that the sanctions imposed on him via IP 5.13 are “sufficiently
9 serious.” The court concludes that the loss of personal phone calls for 180 days, electrical
10 appliances for 180 days, personal visits for one year, canteen privileges for 180 days, and
11 package privileges for two years fails to amount to a “denial of the minimal civilized measure
12 of life’s necessities.” Plaintiff does not allege that the IP 5.13 sanction prevents him from
13 receiving adequate food, clothing, shelter, medical care, or reasonably safe confinement.
14 Although the sanctions under IP 5.13 may be uncomfortable and inconvenient, they are not
15 objectively, sufficiently serious under the Eighth Amendment. Therefore, the court grants
16 Defendants summary judgment on Plaintiff’s claims arising under the Eighth Amendment.

17 4. Equal Protection

18 Plaintiff invokes the Equal Protection Clause in both Count I and Count II. (Pl.’s Am.
19 Compl. 5-7.) Defendants argue that despite Plaintiff’s references to the Equal Protection
20 Clause, none of the facts alleged supports an equal protection claim. (Defs.’ Mot. for Summ.
21 J. 12-13.)

22 In order to state a viable equal protection claim, Plaintiff “must show that the defendant
23 acted with an intent or purpose to discriminate against him based upon his membership in a
24 protected class.” *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003) (citing *Barren v.*
25 *Harrington*, 132 F.3d 1193, 1194 (9th Cir. 1998)). “Intentional discrimination means that a
26 defendant acted at least in part *because of* a plaintiff’s protected status.” *Id.* (citing *Maynard*
27 *v. City of San Jose*, 37 F.3d 1396, 1404 (9th Cir. 1994) (emphasis in original). Here, Plaintiff
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1 does not allege Defendants intentionally discriminated against him because of his membership
2 in a protected class.

3 Where state action “does not implicate a fundamental right or a suspect classification,
4 the plaintiff can establish a ‘class of one’ equal protection claim by demonstrating that [he] ‘has
5 been intentionally treated differently from others similarly situated and that there is no rational
6 basis for the difference in treatment.’” *Squaw Valley Dev. Co. v. Goldberg*, 375 F.3d 936, 944
7 (9th Cir. 2004), *overruled on other grounds by Shanks v. Dressel*, 540 F.3d 1082, 1087 (9th
8 Cir. 2008). In this case, the substance of Plaintiff’s allegations do not demonstrate that he has
9 been intentionally treated differently from others similarly situated. Therefore, to the extent
10 Plaintiff states equal protection claims in Count I and Count II, Defendants are entitled to
11 summary judgment.²

12 **IV. CONCLUSION**

13 **IT IS HEREBY ORDERED** that Plaintiff’s Motion for Reconsideration (Doc. #84) is
14 **DENIED**.

15 **IT IS FURTHER ORDERED** that Defendants’ Motion for Summary Judgment
16 (Doc. #71) is **GRANTED**.

17 **IT IS FURTHER ORDERED** that Plaintiff’s Motion for Summary Judgment
18 (Doc. #79) is **DENIED**.

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24 ² To the extent Plaintiff asserts claims under the Nevada Constitution and to the extent Plaintiff’s claims
25 can be construed to assert other state law claims, the court declines to exercise jurisdiction over them and
26 expresses no opinion as to the viability of any state law claims. Where the court has dismissed all claims over
27 which the court has original jurisdiction, the court may decline to exercise supplemental jurisdiction. 28 U.S.C.
28 § 1367(c)(3). “The decision to retain jurisdiction of state law claims is within the district court’s discretion,
weighing factors such as economy, convenience, fairness, and comity.” *Brady*, 51 F.3d at 816. Here, the court
finds that retaining jurisdiction of the pendant state claims would not serve the economy or convenience of this
court. Therefore, Plaintiff’s state law claims are dismissed without prejudice.

1 **IT IS FURTHER ORDERED** that the following motions are **DENIED** as moot:

- 2 • Defendant Jones's Motion to Dismiss (Doc. #68);
- 3 • Plaintiff's Motion for Hearing (Doc. #107);
- 4 • Plaintiff's Motion for Temporary Restraining Order (Doc. #109);
- 5 • Plaintiff's Motion for Permanent Injunction (Doc. #110).

6 **LET JUDGMENT ENTER ACCORDINGLY.**

7 DATED: August 25, 2010.



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UNITED STATES MAGISTRATE JUDGE

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